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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,425	12/31/2003	Sreenivas Subramoney	30320/17231	9579

4743 7590 06/25/2007  
MARSHALL, GERSTEIN & BORUN LLP  
233 S. WACKER DRIVE, SUITE 6300  
SEARS TOWER  
CHICAGO, IL 60606

EXAMINER
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PORTKA, GARY J

ART UNIT	PAPER NUMBER
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2188

MAIL DATE	DELIVERY MODE
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06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,425	<b>Applicant(s)</b> SUBRAMONEY ET AL.	
	<b>Examiner</b> Gary J. Portka	<b>Art Unit</b> 2188	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 19, 2007 has been entered.
2. Claims 1, 14, and 19 have been amended, and claims 6 and 16 have been canceled by Applicant. Claims 1-5, 7-15, and 17-21 are pending.

### ***Response to Arguments***

3. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 7, 14-15, and 17-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 7 depends on claim 6, and claim 17 depends on claim 16, claims 6 and 16 having been canceled.

Art Unit: 2188

7. Claim 14 recites "determining if any of the plurality of memory regions include a threshold value". This language appears to state just that there is a threshold for each region. That is, is the claim language met by a single threshold value that is set and applies to all memory regions, or by a plurality of thresholds, one for each region (and is there support for this interpretation)? Or, as is thought more likely, should the language be changed to something like "determining if the frequency count of load miss memory addresses for any of the plurality of memory regions has reached a threshold value"? Claims 15, 17, and 18 incorporate this limitation by dependency.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-2, 4-5, 7-9, 13, and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Andreasson, US 7,174,354 B2 (hereinafter "Andreasson").

10. As to claims 1-2, 4, and 19-20, Andreasson discloses *an article with medium having instructions to cause a machine to, and system with hardware to: obtain from a performance monitor performance data for a memory heap having a plurality of memory regions (keep track of fragmentation, how much memory available, speed the program allocates memory time spent on executing instructions, see col. 19 line 55 to col. 20 line*

Art Unit: 2188

29, also claim 1, col. 31 lines 47-49), *based on the performance data, determine if at least one of the regions is a delinquent region* (since as an example an area may be found fragmented, col. 21 lines 40-47, also claim 1, col. 31 lines 49-51), *and in response to that determination, execute a memory management routine to optimize that region of the heap by executing a garbage collection routine on at least one delinquent region, the routine re-arranging the plurality of regions stored in the heap to optimize the heap* (col. 19 and 20 cited above disclose performing controlling garbage collection based upon the monitoring; it is also noted that the garbage collection may be performed on regions as described at col. 12 lines 10-28 and 57-67, section of the heap to optimize may be selected, see col. 22 lines 52-62, selection of incremental approach and size of section, col. 23 lines 15-21, also see claim 1 lines 52-54).

11. As to claim 5, Andreasson discloses the execution of a second memory management routine on a non-delinquent portion, since the garbage collection routine is variously applied to different sections (for example, in the cited incremental method or in the young and old generation method), or alternatively, the compaction may be considered a secondary method to the garbage collection.

12. As to claims 7 and 21, the garbage collection routine is selected from the group recited (see col. 10 line 25 to col. 11 line 27).

13. As to claim 8, size granularity of memory region is disclosed (as previously cited, incremental sections, or alternatively, size of thread local regions at col. 22 lines 57-62).

Art Unit: 2188

14. As to claim 9, keeping track of fragmentation, how much memory is available, speed memory is allocated, time spent on executing instructions, inherently require counting occurrences of the performance data to the extent recited.

15. As to claim 13, blocking the delinquent region is taught to the extent claimed since certain garbage collection methods will block the region being collected until complete.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 3 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreasson.

18. As to claim 3, Andreason teaches several performance monitoring methods, but does not specifically describe the cache or TLB miss, or other elements of the group. However, these elements were all well known parameters that could advantageously be used to indicate performance of a memory or a memory region, and Examiner takes Official Notice that it would have been obvious to select from a group of these parameters to get performance data in the system of Andreasson, because these were well known indicators of performance.

19. As to claim 10, although Andreasson discloses performance measurements that inherently count data as described hereinabove, it is not clear that these counts are

compared to a threshold to determine delinquent regions. However, such a step would have been clear to one of ordinary skill in the art. For example, one of the performance measurements is fragmentation, to determine whether it is "very fragmented", which would be best determined by comparing to some threshold which was predetermined to be the threshold of becoming fragmented enough to call very fragmented. Likewise, measurement of speed a program runs, time spent executing, and average size of allocated objects would easily be seen as advantageously compared to thresholds in order to determine the points at which these measurements indicate some corrective action should be taken. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to compare measured counts of performance data to a threshold, because this was the intuitively obvious way of setting limits at which the measurements indicate a corrective action should be taken.

20. As to claims 11-12, determination of sufficient number of samples, and determining an additional sample to be taken, were well known in digital data performance measurement, and Examiner takes Official Notice that such data measurement steps would have been well known to one of ordinary skill in the art at the time, in order to verify that the amount of data taken was of sufficient volume to give a reliable indication of the memory condition.

### ***Conclusion***

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary J. Portka whose telephone number is (571) 272-4211. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

Art Unit: 2188

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571) 272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gary J Portka  
Primary Examiner  
Art Unit 2188

June 20, 2007

**GARY PORTKA**  
**PRIMARY EXAMINER**

